



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
WILDE ACRES PROPERTY OWNERS' ASSOCIATION, INCORPORATED
FOR
WILDE ACRES SUBDIVISION-MOUNTAIN FALLS PARK
Unpermitted Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, 62.1-44.15:48, and 62.1-44.15:63 between the State Water Control Board and Wilde Acres Property Owners' Association, Incorporated regarding the Wilde Acres Subdivision-Mountain Falls Park for the purpose of resolving certain violations of State Water Control Law and the applicable regulations. The parties to this Consent Order acknowledge that Wilde Acres Property Owners' Association, Incorporated agrees not to contest, but does not admit, that it committed the violations addressed.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "2009 CGP" means the General Permit for Discharges of Stormwater from Construction Activities, No. VAR10, which was promulgated at 4 VAC 50-60-1170 and subsequently transferred to 9 VAC 25-880-70, issued under the Stormwater Management Act, the VSMP Regulations, and the General Permit Regulation on July 1, 2009 and which expired on June 30, 2014.
2. "2014 CGP" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was

issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in SWMA land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means, when used without qualification, a discharge of a VWP or Stormwater Pollutant, or any addition of a VWP or Stormwater Pollutant or combination of VWP or Stormwater Pollutants, to state waters or waters of the contiguous zone or ocean other than a discharge from a vessel or other floating craft when being used as a means of transportation.
8. "Dredging" means a form of excavation in which material is removed or relocated from beneath surface waters.
9. "ESCL land-disturbing activity" means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:51.
10. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any VWP Pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
11. "Fill Material" means any VWP Pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
12. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
13. "Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:20 A of the Code of Virginia.

14. "SWMA land disturbance" or "SWMA land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
15. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
16. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
17. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3; 9 VAC 25-210-10.
18. "Registration Statement" means a registration statement for coverage under the 2009 CGP or 2014 CGP.
19. "Significant alteration or degradation of existing wetland acreage or function" means human-induced activities that cause either a diminution of the areal extent of the existing wetland or cause a change in wetland community type resulting in the loss or more than minimal degradation of its existing ecological functions. 9 VAC 25-210-10.
20. "Site" means those areas of the Wilde Acres Subdivision (also known as Mountain Falls Park) that are owned and/or operated by WAPOA, including the tract of land located on Cardinal Drive, the road network in the Wilde Acres Subdivision, and the area associated with the shale pit at the end of Cougar Trail.
21. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
22. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

23. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
24. "Stormwater Pollutant" means "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
25. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of Stormwater Pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
26. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
27. "Va. Code" means the Code of Virginia (1950), as amended.
28. "VAC" means the Virginia Administrative Code.
29. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
30. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the Virginia Stormwater Management Act, and evaluation consistent with the requirements of the Virginia Stormwater Management Act and associated regulations. Va. Code § 62.1-44.15:24.
31. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and

intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.

32. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 *et seq.*
33. "VWP Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
34. "VWP Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to pollution. 9 VAC 25-210-10.
35. "VWP Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
36. "WAPOA" means Wilde Acres Property Owners' Association, Incorporated, a non-profit corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Wilde Acres Property Owners' Association, Incorporated is a "person" within the meaning of Va. Code § 62.1-44.3. WAPOA is a property owners' association under Va. Code §§ 55-508, *et seq.*
37. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.
38. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. WAPOA owns and manages the road network and shale-pit area in the Wilde Acres Subdivision-Mountain Falls Park located in Frederick County, Virginia.
2. On February 21, 2014, March 25, 2014, and August 7, 2014, DEQ staff conducted inspections of the Site in response to complaints of construction without a permit received from residents of the Wilde Acres Subdivision. DEQ staff observed a stream crossing and fill material placed in an unnamed tributary to Pifer Run, a state water, under Cardinal Drive causing impacts to approximately 150 linear feet. DEQ staff also observed a culvert pipe placed in an unnamed tributary to Pifer Run adjacent to Opossum Trail causing impacts to approximately 100 feet. After a record review, DEQ did not locate an application or that a VWP Permit had been granted for the impacts at the Site.

Va. Code § 62.1-44.15:20 and the VWP Regulations at 9 VAC 25-210-50 states that no person shall dredge, fill or discharge any VWP Pollutant into, or adjacent to surface waters, withdraw surface water, otherwise alter the physical, chemical or biological properties of surface waters and make them detrimental to the public health, or to animal or aquatic life without a VWP Permit issued by the Director.

3. On February 21, 2014 and April 1, 2015, DEQ staff conducted construction stormwater inspections at the Site in response to complaints received from residents of the Wilde Acres Subdivision.
4. During the inspection on February 21, 2014, DEQ staff observed discharge of stormwater from SWMA land-disturbing activities greater than one acre at the Site in the shale-pit area at the end of Cougar Trail. On April 1, 2015, DEQ staff observed SWMA land-disturbing activities greater than one acre in the shale-pit area at the Site in an area subject to stormwater runoff. At the time of the February 21, 2014 inspection, WAPOA had not submitted a registration statement for coverage under the 2009 CGP, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site. At the time of the April 1, 2015 inspection, WAPOA had not submitted a registration statement for coverage under the 2014 CGP, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site.

Va. Code § 62.1-44.5(A) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . [d]ischarge stormwater into state waters from . . . [SWMA] land disturbing activities."

9 VAC 25-870-310(A) states: "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from . . . [SWMA] land-disturbing activities."

Va. Code § 62.1-44.15:34(A) states: "A person shall not conduct any [SWMA] land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin [SWMA] land disturbance."

5. On February 21, 2014, DEQ staff observed that SWMA land disturbance exceeding an acre had occurred at the Site in the shale-pit area at the end of Cougar Trail. Frederick County staff conveyed to DEQ that Frederick County had not approved an erosion and sediment control plan for such SWMA land-disturbing activities at the time of the DEQ inspection.

Va. Code § 62.1-44.15:55(A) states: "Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any [ESCL] land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved."

9 VAC 25-870-95(L) states: "[SWMA] land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations."

6. During the Site inspection on April 1, 2015, DEQ staff observed that SWMA land disturbance exceeding one acre has occurred at the Site in the shale-pit area at the end of Cougar Trail without prior development of an erosion and sediment control plan, stormwater management plan, or pollution prevention plan. Frederick County staff conveyed to DEQ that Frederick County had not approved a stormwater management plan or erosion and sediment control plan for such SWMA land-disturbing activities at the time of the DEQ inspections.

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to [SWMA] land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations." *See also* Va. Code § 62.1-44.15:55(A).

9 VAC 25-870-54(C) states: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to [SWMA] land disturbance, this plan must be approved by the VSMP authority."

9 VAC 25-870-54(D) states: "A pollution prevention plan that identifies potential sources of [Stormwater Pollutants] that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize [Stormwater Pollutants] in stormwater discharges from the construction site must be developed before [SWMA] land disturbance commences."

The provisions of 9 VAC 25-870-54 cited above took effect July 1, 2014.

7. On February 21, 2014 and April 1, 2015, DEQ staff observed the following conditions at the shale-pit area at the end of Cougar Trail. Areas that had been dormant for longer than fourteen days exhibited rill and gully erosion and lacked stabilization. Soil stockpiles were not stabilized and lacked sediment trapping measures. Upslope land disturbance had occurred, but controls to trap sediment were not installed. Installed diversion dikes were not stabilized, and the stormwater conveyance channel along the access road to the Site at the end of Cougar Trail was not lined or stabilized.

9 VAC 25-840-40(1) states: "Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site."

Temporary soil stabilization shall be applied within seven days to denuded areas that may not be at final grade but will remain dormant for longer than 14 days. Permanent stabilization shall be applied to areas that are to be left dormant for more than one year."

9 VAC 25-840-40(2) states: "During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures."

9 VAC 25-840-40(4) states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place."

9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

9 VAC 25-840-40(11) states: "Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel."

9 VAC 25-870-95(L) states: "[SWMA] land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations."

8. On February 21, 2014 and April 1, 2015, DEQ staff observed that ESCL land-disturbing activities exceeding 10,000 square feet have occurred at the Site for road work in areas other than the shale pit at the end of Cougar Trail. Frederick County staff conveyed to DEQ that Frederick County had not approved an erosion and sediment control plan for such ESCL land-disturbing activities at the time of the DEQ inspections.

Va. Code § 62.1-44.15:55(A) states: "Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any [ESCL] land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved."

9. On April 16, 2014, DEQ issued Warning Letter No. 14-3-VRO-003 to WAPOA for stormwater and Virginia Water Protection Program violations. On April 22, 2014, DEQ received a response from WAPOA's legal representative, stating that "WAPOA is a homeowner's association, without any experience or expertise concerning issues of this nature."
10. The stormwater violations were initially referred to Frederick County, which became the local VSMP authority on July 1, 2014.
11. On December 5, 2014, DEQ issued Notice of Violation No. 14-12-VRO-002 to WAPOA for violations of the Virginia Water Protection Program as cited above. On January 16,

2015, DEQ received a written response from WAPOA. WAPOA stated that there was an inspection, and approval, of a culvert pipe along Cardinal Drive in 2011 by Frederick County inspectors¹ and that WAPOA is not aware of any other culvert or the need for any further action by WAPOA regarding a culvert.

12. On April 28, 2015, DEQ issued NOV No. 15-04-VRO-007 to WAPOA for construction stormwater and erosion and sediment control violations. On May 20, 2015, WAPOA's legal representative sent a letter to DEQ in response, stating that "WAPOA is working with an engineering consultant and Frederick County to develop an erosion and sediment control plan." Additionally, WAPOA claimed that it has not engaged in SWMA land-disturbing activities greater than one acre in the shale-pit area since a date before April 2014.
13. On November 9, 2015 Frederick County approved an erosion and sediment control plan for the Site. The erosion and sediment control plan does not include channel adequacy calculations for all channels (including culverts) at the Site. For culverts that were analyzed, the erosion and sediment control plan only requires resizing of undersized culverts to contain the two-year storm.

WAPOA requested variances to the Erosion and Sediment Control Regulations in accordance with 9 VAC 25-840-40 and Frederick County Code, Chapter 143, Stormwater and Erosion and Sediment Control Ordinance. Frederick County approved the variances to minimum standards 1, 2, 3, 6 and 19.

9 VAC 25-840-40(19)(b) states: "Adequacy of all channels and pipes shall be verified in the following manner:

- (1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred times greater than the contributing drainage area of the project in question; or
- (2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.
(b) All previously constructed man-made channels shall be analyzed by the use of a 10-year storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and
(c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to verify that stormwater will be contained within the pipe or system."

9 VAC 25-840-40(19)(c) states: "If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:

- (1) Improve the channels to a condition where a 10-year storm will not overtop the banks and a two-year storm will not cause erosion to the channel, the bed, or the banks; or

¹ Frederick County staff indicated to DEQ staff that Frederick County does not have any plans or record of approval for the culvert.

- (2) Improve the pipe or pipe system to a condition where the 10-year storm is contained within the appurtenances;
- (3) Develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a 10-year storm to increase when runoff outfalls into a man-made channel; or
- (4) Provide a combination of channel improvement, stormwater detention or other measures which is satisfactory to the VESCP authority to prevent downstream erosion.”

14. Based on the results of the DEQ Site inspections on February 21, 2014, March 25, 2014, August 7, 2014, and April 1, 2015, and the documentation submitted on January 16, 2015, the Board concludes that WAPOA has violated Va. Code §§ 62.1-44.5, 62.1-44.15:20, 62.1-44.15:34, 62.1-44.15:55; 9 VAC 25-210-50; 9 VAC 25-840-40; 9 VAC 25-870-54; 9 VAC 25-870-95; 9 VAC 25-870-310; as described in paragraphs C(2), C(4) through C(8), and C(13) above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, 62.1-44.15:48, and 62.1-44.15:63 the Board orders WAPOA, and WAPOA agrees to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of WAPOA, for good cause shown by WAPOA, or on its own motion, for good cause shown, pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 15-04-VRO-007 dated April 28, 2015, NOV No. 14-12-VRO-002 dated December 5, 2014, and Warning Letter No. 14-3-VRO-003 dated April 16, 2014. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility on matters not documented in this order; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, WAPOA admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. WAPOA consents to venue in the Circuit Court of Frederick County for any civil action taken to enforce the terms of this Order.

5. WAPOA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law, and WAPOA waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein, except that WAPOA reserves its right to a hearing or other administrative proceeding authorized or required by law or to judicial review of any issue of fact or law contained in any subsequent amendments of this Order issued by the Board without the consent of WAPOA. Nothing herein shall be construed as a waiver of, and WAPOA reserves, the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by WAPOA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. WAPOA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. WAPOA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. WAPOA shall notify the DEQ Regional Director verbally within 72 hours when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order, and such notice shall identify the unforeseeable circumstances that occurred. WAPOA shall notify the DEQ Regional Director in writing within ten business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such written notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within five business days, of learning of any condition above, which the parties intend to assert

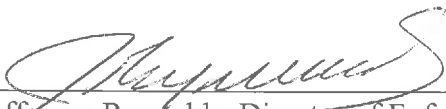
will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and WAPOA.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after WAPOA has completed all of the requirements of the Order;
 - b. WAPOA petitions the Director or his designee or the Circuit Court of the City of Richmond to terminate the Order after it has completed all of the requirements of the Order, and the Director or his designee or the Circuit Court of the City of Richmond approves the termination of the Order; or
 - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to WAPOA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve WAPOA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by WAPOA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of WAPOA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind WAPOA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by or on behalf of a responsible official of WAPOA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, WAPOA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 3 day of May, 2018.



Jefferson Reynolds, Director of Enforcement
Department of Environmental Quality

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Wilde Acres Property Owners' Association, Incorporated voluntarily agrees to the issuance of this Order.

Date: 2/28/2018 By: Betty Jean Grihanne President
(Person) (Title)

Wilde Acres Property Owners' Association, Incorporated

SIGNATURE B. J. Grihanne

Commonwealth of Virginia

City/County of FREDERICK

The foregoing document was signed and acknowledged before me this 28th day of FEBRUARY, 2018, by BETTY JEAN GRIHANNE who is PRESIDENT of Wilde Acres Property Owners' Association, Incorporated on behalf of the company.

SALLY J. EHLERS

Notary Public

7262791

Registration No.

My commission expires: 09.30.21

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

1. Unpermitted Land-Disturbing Activities

- a. Immediately upon execution of this Order, WAPOA shall cease all SWMA land-disturbing activities in the shale-pit area at the Site until 2014 CGP coverage has been obtained and a complete SWPPP has been developed. However, this requirement shall not apply to SWMA land-disturbing activities necessary for corrective measures required or allowed by this Order or the Virginia Erosion and Sediment Control Law and Regulations.
- b. WAPOA shall either:
 - i) Within sixty days of the effective date of this Order, WAPOA shall develop a complete SWPPP and submit a complete and accurate application, including a registration statement, to the VSMP Authority for coverage under the 2014 CGP for discharge of stormwater from SWMA land-disturbing activities in the shale-pit area at the end of Cougar Trail at the Site; or
 - ii) Complete permanent stabilization of the disturbed area in the shale-pit area at the end of Cougar Trail at the Site as follows:
 - (1) Within sixty days of the effective date of this Order, WAPOA shall submit to DEQ a detailed plan (Stabilization Plan) addressing how WAPOA will permanently stabilize the shale-pit area of the Site. The Stabilization Plan shall include a schedule of implementation and shall include a schedule of post-stabilization monitoring to ensure that the shale-pit area of the Site does not return to an erosive condition.

WAPOA shall respond to any DEQ comments regarding the Stabilization Plan within 45 days from the date of DEQ comments.

Upon DEQ approval, WAPOA shall promptly implement the approved Stabilization Plan, in accordance with the schedule contained therein, or in accordance with any amended schedule approved by DEQ upon the request of WAPOA.

During the time between DEQ approval of the Stabilization Plan and completion of all requirements of the Stabilization Plan, WAPOA shall send DEQ quarterly written progress reports by the thirtieth day of March, June, September, and December, documenting work done to achieve stabilization in the shale-pit area of the Site.

- (2) If either of the following occurs, WAPOA shall take additional steps necessary and designed to achieve permanent vegetative cover that is uniform, mature enough to survive, and will inhibit erosion in the shale-pit area of the Site.
 - (a) Post-stabilization monitoring conducted at least one year following completion of the Stabilization Plan reveals an erosive condition, characterized by rill and gully erosion, in the shale pit area of the Site, or
 - (b) DEQ notifies WAPOA that DEQ staff observed an erosive condition, characterized by rill and gully erosion, in the shale pit area of the Site during an inspection after the deadline for completion of stabilization set forth in the Stabilization Plan.

2. **Erosion and Sediment Controls**

- a. Within 21 days of the effective date of this Order, WAPOA shall install all controls to trap sediment from all denuded land in the shale pit area at the Site, in accordance with the approved erosion and sediment control plan. WAPOA shall also abide by the terms of the approved erosion and sediment and control plan in all other respects.
- b. Within seven days of the effective date of this Order, WAPOA shall apply stabilization measures to any diversion dikes in the shale pit area at the Site, in accordance with 9 VAC 25-840-40(5).
- c. Within seven days of the effective date of this Order, WAPOA shall install channel lining and stabilize the stormwater conveyance channel along the access road to the shale pit area of the Site at the end of Cougar Trail, in accordance with 9 VAC 25-840-40(11).
- d. Within 60 days of the effective date of this Order, WAPOA shall submit to DEQ an analysis of the culverts identified on the July 13, 2015 Culvert Data and Road View Table in WAPOA's erosion and sediment control plan as culvert IDs 49, 50, 58, 62, 90, 94, 112, 145, 192, and 193, in accordance with the criteria set forth in 9 VAC 25-840-40(19)(b).

Within 120 days of the effective date of this Order, should such analysis indicate that any of the above-listed culverts do not satisfy the adequacy criteria in 9 VAC 25-840-40(19)(b), WAPOA shall submit for DEQ review and approval a detailed plan (Culvert Improvement Plan) to improve such culverts and/or provide for other measures to satisfy the requirements of 9 VAC 25-840-40(19)(b). The Culvert Improvement Plan shall include a schedule of implementation.

WAPOA shall respond to any DEQ comments regarding the Culvert Improvement Plan within 30 days from the date of the DEQ comments.

Upon DEQ approval, WAPOA shall immediately implement the approved Culvert Improvement Plan in accordance with the implementation schedule contained therein.

3. **DEQ Contact**

Unless otherwise specified in this Order, WAPOA shall submit all requirements of Appendix A of this Order to:

Carla Pool
Enforcement Adjudication Manager
VA DEQ – Central Office
P.O. Box 1105
Richmond, Virginia 23218
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